



DEPARTMENT OF THE NAVY

OFFICE OF THE CHIEF OF NAVAL OPERATIONS
2000 NAVY PENTAGON
WASHINGTON, DC 20350-2000

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Ser DNS-36JP/15U105799

September 28, 2015

Sent via email to: mkwoka@law.du.edu

Ms. Margaret B. Kwoka
Assistant Professor of Law
University of Denver Sturm College of Law
2255 E. Evans Avenue
Denver, CO 80208

Dear Ms. Kwoka:

This is in reference to your Freedom of Information Act (FOIA) request dated October 6, 2014. Your request was received in our office on October 7, 2014, and assigned case number DON-NAVY-2015-000136.

Please be advised that the DON FOIA program is decentralized, with individual FOIA requester service centers independently processing requests and maintaining their own documentation of processed requests. As a result, we are limited in our ability to address your request with regard to FOIA requests processed outside this office.

Please find attached extracts from the FOIA tracking database in use during calendar year 2013. As the DON FOIA program tracks receipt of requests on a fiscal year basis, rather than a calendar year basis (i.e., 1 October - 30 September), we have enclosed extracts for Fiscal Years 2013 and 2014. Additionally, please find attached an extract from the current FOIA tracking database, which is needed to fully account for the processing of FOIA requests received in calendar year 2013.

You will note that the names of private individuals who have filed FOIA requests are not recorded in this log, and these same names have been removed from the extracts. While FOIA requests are public records, and the requesters have a diminished expectation of privacy with regard to the fact of their submission of a FOIA request and the information contained within the request, they do not forfeit all privacy rights in

September 28, 2015

their submission of FOIA requests. Therefore, the subject matter of some FOIA requests is such that disclosure of the names of the requesters along with the records requested would itself be a clearly unwarranted invasion of the requester's personal privacy.

Those records, as they are associated with the aforementioned database, are therefore withheld in accordance with 5 U.S.C. § 552(b)(6). Additionally, we are withholding the names of individual caseworkers assigned to requests under the same FOIA exemption.

The FOIA tracking database used for calendar year 2013 was a shared database that encompassed both FOIA processing and requests processed under the Privacy Act, and was used by more than 90% of DON FOIA offices, to varying extents. Additionally, this database had been in use by some FOIA offices for several years, and therefore contains requests outside of the calendar year 2013 date range. Each request in this database consists of over 100 data fields (though some may be blank in a significant number of requests, while others are purely internal, with little informational value). This database, and its associated software tracking system, is no longer in use by the Navy. Use of this system was phased out as of February 1, 2014. On that date, the Navy FOIA program transitioned to FOIAonline as an enterprise-wide FOIA tracking system. This transition did not include the migration of records for requests closed before October 1, 2013 (i.e., the beginning of Fiscal Year 2014). More detailed retrieval of these records would therefore entail access of a legacy system, and may require outside contract work at a significant cost.

In addition, with particular regard to the first and fourth items of your request, please be advised that a publicly releasable version of this office's FOIA log is available in the DON FOIA Reading Room, under the "Read" section of <https://foia.navy.mil>.

With regard to the second item of your request, please also be advised that DON FOIA fee policy is executed in accordance with Title 32 of the Code of Federal Regulations (CFR) Part 701, Subpart C. The CFR is publicly available through the Government Printing Office website (www.gpo.gov). You can find additional

information regarding Department of Defense (DoD) and DON FOIA policy at <http://www.dod.mil/pubs/foi/> and <https://foia.navy.mil/>.

Fee category determinations are conducted on a case-by-case basis, and are dependent upon the intended use of the information sought. The identity of the requester is normally irrelevant to a fee category determination, and is only considered if the intended use of the information sought is unclear. As a result, there is no "master list" of fee category determinations, and requests are not associated with fee category determinations in any retrievable manner. An in-depth discussion of fee categories and FOIA caselaw surrounding these matters has been compiled by the Department of Justice (DOJ), and is publicly available via the DOJ website at <http://www.justice.gov/oip/doj-guide-freedom-information-act-0>.

Fee waiver determinations are similarly conducted on a case-by-case basis, and are not tracked or retrievable in any consolidated form. Formal fee waiver determinations are tracked for reporting purposes, but these numbers do not account for instances where a waiver was granted on the initiative of this office. Additionally, the effort of fee categorization and fee waiver determination is conducted only when there is an expectation that the processing of a request will incur assessable fees. In instances where the assessable fees are minimal and fall below the billable threshold, fee considerations normally do not progress beyond the determination that a request is clearly not for commercial purposes. As a result, no fee category or waiver determination is made or recorded.

With regard to the third item of your request, please be advised that cost and assessable fees are tracked only in instances where a request is anticipated to incur assessable fees, and are not tracked or retrievable in any consolidated form. In instances where processing cost is minimal, creating a record of the processing cost can often be more expensive than the processing itself, and is therefore not performed.

The aggregate cost of FOIA processing is routinely reported in the Annual FOIA Report, which provides a good-faith estimate to account for the processing cost of these minimal cost

September 28, 2015

requests. Annual Reports from Fiscal Years 1997 through 2013 are available in the DON FOIA Reading Room, under the "Read" section of <https://foia.navy.mil>. Annual Reports from Fiscal Year 2008 through the present are available through <http://www.foia.gov>.

If you wish to further pursue any portion of this request, please submit a revised request, identifying the specific scope of the records requested in as much detail as possible. This office is available to assist you in order to formulate a request that will ensure release of the greatest volume of records possible in the shortest possible time frame.

Because your request is partially denied, you are advised of your right to appeal the denial of your request by writing to:

Office of the Judge Advocate General
1322 Patterson Ave, SE, Ste 3000
Washington Navy Yard, DC 20374-5066

Your appeal must be postmarked within sixty calendar days from the date of this letter. A copy of your initial request and this letter must accompany the appeal. The appeal should be marked "FREEDOM OF INFORMATION APPEAL" both on the envelope and the face of the letter. In order to expedite the appellate process and ensure full consideration of your appeal, your appeal should contain a brief statement of the reasons you believe this decision to be in error.

Additionally, the 2007 FOIA amendments directed the Chief FOIA Officer of each agency to designate one or more FOIA Public Liaisons. Please be advised that the DON FOIA Public Liaison is available to assist in disputes between the requester and the agency. The role of the Liaison is to provide FOIA requesters with an avenue to raise concerns about the service received from a Navy Requester Service Center. You may write to the DON FOIA Public Liaison at Department of the Navy Chief Information Office (DON CIO), 1000 Navy Pentagon, Washington, DC 20350-1000. Alternately, you may contact the DON FOIA Public Liaison via telephone at (703) 695-1297, via fax at (703) 614-4388, or via email at DONFOIAPublicLiaison@navy.mil.

In this instance, the fees associated with the processing of this request were below the minimum threshold and have not

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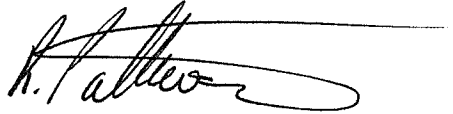
Ser DNS-36JP/15U105799

September 28, 2015

been assessed. Please be advised, however, that fees, fee categories, and fee waivers are determined on a case-by-case basis, and a previous determination has no influence on future determinations.

Questions regarding the action this office has taken during the initial processing of your request may be directed to our FOIA service center at (202) 685-0412.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Patterson", with a long horizontal flourish extending to the right.

R Patterson

Head, DON FOIA/PA Program Office